



**DEPARTMENT OF
HUMAN RESOURCE MANAGEMENT**

**EMPLOYEE GUIDE
TO
UNLAWFUL HARASSMENT
PREVENTION**



NOTE



The purpose of this guide is to supply you with the reference materials necessary to train you on the State's Unlawful Harassment Prevention Program and your role in it. It was produced expressly **“FOR TRAINING PURPOSES ONLY”** by the Department of Human Services (DHS), Human Resource Field Office. It does not supersede or amend any laws, rules, policies, or established practices.

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UNLAWFUL HARASSMENT PREVENTION



INTRODUCTION

Unlawful harassment is discriminatory conduct based on an individual's protected class that has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment, and will not be tolerated in state government. Any form of illegal discrimination and or unlawful harassment by an employee at any level, constitutes misconduct that undermines the integrity of the employment relationship and the dignity of the individual or individuals at whom the actions are directed. It is also unlawful harassment if submission to or rejection of such conduct by an employee is used as a basis for employment or other tangible job decisions affecting that individual.

State employees and volunteers have the right to work in an environment free from unwanted and unwelcome unlawful harassment and illegal discrimination. At the same time, they have a responsibility to report it if it occurs. Upon completion of this training you should understand:

1. There are federal and state laws/policies that prohibit unlawful harassment.
2. What constitutes "*unlawful harassment*" and be able to recognize examples of it.
3. Your responsibility in preventing unlawful harassment and/or reporting such behavior.
4. You can file an unlawful harassment complaint through multiple avenues with no fear of retaliation.



LEGAL & LIABILITY STANDARDS

This section discusses Federal Law, State Law and DHRM Policies that prohibit unlawful harassment.

FEDERAL LAW

The following federal acts serve to identify those “protected classes” that are covered under unlawful harassment:

1. **Title VII, 1964 Civil Rights Act** -Originally prohibited employment discrimination based on religion, color, national origin, race. However, it was amended in 1972 to include sexual harassment as a violation of federal law. The Equal Employment Opportunity Commission (EEOC) is the federal agency that enforces unlawful harassment guidelines.
2. **Americans With Disabilities Act (ADA)** – Prohibits discrimination in employment on the basis of a disability, having a record of a disability, or being regarded as having a disability.
3. **Age Discrimination in Employment Act (ADEA)** – Prohibits employment discrimination based on age with respect to persons who are 40 years of age or older.
4. **Civil Rights Act of 1991** - Grants victims alleging discrimination based on gender, race, religion, color, or national origin, broader remedies and privileges through litigation than were previously allowed. Under the Act of 1991, plaintiffs have the right to a jury trial, and if successful, may be granted punitive and compensatory damages. (However, the state may not be sued except for injunctive relief for disability and age discrimination).



UTAH LAW

Just as the Equal Employment Opportunity Commission is the federal agency charged with enforcing Title VII of the Civil Rights Act of 1964, the Utah Anti-discrimination and Labor Division (UALD) of the Utah Labor Commission is the state agency charged with enforcing the Utah Anti-discrimination Act. The Labor Commission has produced rules that provide a definition of sexual harassment that is substantially identical to that established by the EEOC and accepted by the Supreme Court. (Procedurally, anyone who wishes to file a sexual harassment complaint with the EEOC or the UALD of the Labor Commission need only file with UALD).



GOVERNOR'S EXECUTIVE ORDER (2006)

In 2006, a Governor's Executive Order spelling out Unlawful Harassment Guidelines for the State of Utah was signed. The order mandated the establishment of the DHRM rules and policies, and the content and attendance requirements for harassment prevention and awareness training.

RULE 477-15 UNLAWFUL HARASSMENT POLICY AND PROCEDURE

15-1. Purpose.

It is the State of Utah's policy to:

- (1) provide all employees a working environment that is free from unlawful harassment based on race, religion, national origin, color, sex, age, disability, or protected activity under the anti-discrimination statute; and
- (2) comply with state and federal laws regarding discrimination based on unlawful harassment.

15-2. Policy.

- (1) Unlawful harassment means discriminatory treatment based on race, religion, national origin, color, sex, age, protected activity or disability. Discrimination based on unlawful harassment will not be tolerated. Violators shall be subject to corrective action or disciplined and may be referred for criminal prosecution. Discipline may include termination of employment.
- (2) Unlawful harassment includes the following subtypes:
 - (a) behavior or conduct in violation of R477-15-2(1) that is unwelcome, pervasive, demeaning, ridiculing, derisive, or coercive, and results in a hostile, offensive, or intimidating work environment;
 - (b) behavior or conduct in violation of R477-15-2(1) that results in a tangible employment action being taken against the harassed employee.
- (3) The imposition of corrective action and discipline is governed by R477-10-2 and R477-11.
- (4) An employee shall be subject to corrective action or discipline for unlawful harassment towards another employee, even if that harassment occurs outside of scheduled work time or work location, provided that the harassment meets the requirements of R477-15-2(2).
- (5) Individuals affected by alleged unlawful harassment may, but shall not be required to, confront the accused harasser before filing a complaint.
- (6) Once a complaint has been filed, the accused shall not communicate with the complainant regarding allegations of harassment.

15-3. Retaliation.

- (1) No person may retaliate against any employee who opposes a practice forbidden under this policy, or has filed a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this policy, or is otherwise engaged in protected activity.
- (2) Any act of retaliation toward the complainant, witnesses or others involved in the investigation shall be subject to corrective action or disciplinary action. Prohibited actions include:
 - (a) open hostility to complainant, participant or others involved;
 - (b) exclusion or ostracism of the complainant, participant or others;
 - (c) creation of or the continued existence of a hostile work environment;

- (d) discriminatory remarks about the complainant, participant or others;
- (e) special attention to or assignment of the complainant, participant or others to demeaning duties not otherwise performed;
- (f) tokenism or patronizing behavior;
- (g) discriminatory treatment;
- (h) subtle harassment; or
- (i) unreasonable supervisory imposed time restrictions on employees in preparing complaints or compiling evidence of unlawful harassment activities or behaviors.

15-4. Complaint Procedure.

Individuals affected by unlawful harassment may file complaints and engage in an administrative process free from bias, collusion, intimidation or retaliation.

- (1) Individuals who feel they are being subjected to unlawful harassment should do the following:
 - (a) document the occurrence;
 - (b) continue to report to work; and
 - (c) identify a witness, if applicable.
- (2) An employee may file an oral or written complaint of unlawful harassment with their immediate supervisor, any other supervisor within their direct chain of command, the agency human resource office or the Department of Human Resource Management.
- (3) Any complaint of unlawful harassment shall be acted upon following receipt of the complaint.
 - (a) Complaints may be submitted by any individual, witness, volunteer or other employee.
 - (b) Complaints may be made through either verbal or written notification and shall be handled in compliance with confidentiality guidelines.
 - (c) Any supervisor who has knowledge of unlawful harassment shall take immediate, appropriate action and document the action.

- (4) If an immediate investigation by the agency is not warranted, a meeting shall be held with the complainant, the supervisor or manager of the appropriate division, and others as appropriate to communicate the findings and management's resolution of the complaint.

15-5. Investigative Procedure.

- (1) The investigative procedures established by agencies shall allow the complainant to make specific requests relating to the investigation process and about the person or persons who will conduct the investigation. The agency shall attempt to comply with these requests, but may take whatever action necessary and appropriate to resolve the complaint.
- (2) Preliminary reviews and investigations must be conducted in accordance with procedures issued by the Department of Human Resource Management.
- (3) Results of Investigation
 - (a) If the investigation reveals that disciplinary action is warranted, the agency head shall take appropriate action as provided in R477-11.
 - (b) If an investigation reveals evidence of criminal conduct in unlawful harassment allegations, the agency head or Executive Director, DHRM, may refer the matter to the Attorney General's Office or County or District Attorney as appropriate.
 - (c) If an investigation of unlawful harassment reveals that the accusations are unfounded, the findings shall be documented, the investigation terminated, and appropriate parties notified.
 - (d) Investigations shall be conducted by qualified individuals based on DHRM standards.

15-6. Records.

- (1) A separate protected record of all unlawful harassment complaints shall be maintained and stored in the agency's human resource office, DHRM office or in the possession of an authorized official. Removal or disposal of records in the protected file may only be done with the approval of the agency head or Executive Director, DHRM, and only after minimum timelines specified herein have been met. Records shall be kept for a minimum of three years from the resolution of the complaint or investigative proceeding.
- (2) Supervisors shall not keep separate files related to complaints of unlawful harassment.

- (3) All information contained in the complaint file shall be classified as protected pursuant to requirements of Section 63-2-304, Government Records Access and Management Act.
- (4) Information contained in the unlawful harassment protected file shall only be released by the agency head or Executive Director, DHRM, when in compliance with the requirements of law.
- (5) Participants in any unlawful harassment proceeding shall treat all information as protected.
- (6) Final disposition of unlawful harassment cases shall be communicated to appropriate parties.

15-7. Training.

- (1) Agencies shall comply with the Unlawful Harassment Prevention Training Standards set by DHRM. As a minimum, these shall contain:
 - (a) course curriculum standards;
 - (b) training presentation requirements;
 - (c) trainer qualifications; and
 - (d) training records management criteria.

KEY: administrative procedures, hostile work environment

July 3, 2001

Notice of Continuation June 11, 2002

67-19-6

67-19-18

Governor's Executive Order on Sexual Harassment, March 17, 1993

TERMS AND CONCEPTS

The following terms and concepts are those associated with unlawful harassment and discrimination.

1. **UNLAWFUL HARASSMENT** - any unlawful behavior or conduct that: (a) is based on race, color, religion, sex, national origin, age, disability, or protected activities under the anti-discrimination statutes; (b) is unwelcome and severe, pervasive, demeaning, derisive or coercive; (c) results in the creation of a hostile, abusive or intimidating work environment or tangible employment action; and (d) involves a state employee as the victim, or the alleged harasser.
2. **PROTECTED ACTIVITY** - opposition to discrimination or unlawful harassment, or participation in proceedings covered by the federal or state anti-discrimination statutes.
3. **PROTECTED CLASSES** - includes race, color, religion, national origin, age, disability, sex, and protected activity.
4. **TANGIBLE EMPLOYMENT ACTION** - any action by management that results in a significant change in employment status such as hiring, firing, failure to promote, demotion, and undesirable assignments; or, a decision that causes a significant change in benefits, compensation, or work assignment.
5. **DISCRIMINATION** - typically means to make distinctions in treatment, show partiality, or prejudice. In employment this usually means that one prejudices another based on “who they are” (protected class) as opposed to their qualifications.
6. **RETALIATION** - the law has forbidden taking retaliatory action against anyone who files a discrimination or harassment complaint or who serves as a witness for a complainant. Because the rules and guidelines from the EEOC are somewhat complex, employees are encouraged to contact their supervisor or their human resource liaison to discuss any allegation of retaliation before filing a specific complaint.
7. **BIAS & ISM’S** - these are beliefs that result in a predisposition to act a certain way toward others based on prejudices or slanted views. The following are examples:

Gender Bias - Age Bias - Religious Bias – Racism – Sexism.

Note that “*bias and isms*” are attitudes. There are no laws or policies that regulate employee's attitudes, only their behaviors.

UNLAWFUL HARASSMENT USUALLY FALLS INTO ONE OF THREE CATEGORIES

1. TANGIBLE EMPLOYMENT ACTION

Any action by management that results in a significant change in employment status such as a hiring, firing, failure to promote, demotion, and undesirable assignments; or, a decision that causes a significant change in benefits, compensation or work assignments.

Generally requires a person of position to bring his or her official power or authority to bear on a subordinate to inflict direct economic harm on him/her. Tangible employment action does not include insignificant changes in employment status such as a change of job title without a change in salary, benefits, or duties.

2. HOSTILE WORK ENVIRONMENT

Unlawful behavior that creates an offensive, hostile, intimidating workplace or unreasonably interferes with an individual's work performance. In order for a work environment to be an actionable hostile work environment the behaviors that are causing the hostile environment must be based on an employee's protected class and must be sufficiently **severe, persistent, pervasive and objectively offensive** as to alter the conditions of an employee's employment and create an abusive working environment. Generally, a single incident, comment or other isolated incident will not be enough to create a hostile work environment.

3. THIRD-PARTY UNLAWFUL HARASSMENT

Unwelcome and unlawful behavior that may not be directed at an employee personally but is part of the employee's work environment.

Example - A group of employees constantly tell jokes (i.e., racial, ethnic, religious, sexual, etc.) among themselves, but the jokes can be overheard by others who may be offended.

PROTECTED CLASSES



DISABILITY DISCRIMINATION

Employers cannot discriminate against people with disabilities in regard to any employment practices or terms, conditions, and privileges of employment. This prohibition covers all aspects of the employment process including such things as promotions, hiring, layoffs, compensation, and benefits. The Americans with Disabilities Act defines an individual with a disability specifically as: A person who has a physical or mental impairment that substantially limits one or more of his/her major life activities (common to others); has a record of such an impairment or is regarded as having such an impairment.

NATIONAL ORIGIN DISCRIMINATION



It is unlawful to discriminate against any employee or applicant because of the individual's national origin. No one can be denied equal employment opportunities because of birthplace, ancestry, culture, or linguistic characteristics common to a specific ethnic group; or because of marriage or association with or promotion of persons of a national origin group; or attendance or participation in schools, churches, temples or mosques associated with a national origin group or a surname associated with national origin.

RACE AND COLOR DISCRIMINATION



This contains two provisions that broadly prohibit discrimination by employers. It specifically prohibits discrimination in hiring, termination, compensation, terms and conditions and privileges of employment.

RELIGIOUS DISCRIMINATION



This section defines religion broadly to include all aspects of religious observance, practice and belief. It also provides that employers must "reasonably accommodate the religious practices of employees unless they can demonstrate that to do so would cause an "undue hardship." It is also unlawful for employers to discriminate against an applicant for employment because of their religious beliefs (this includes, hiring, firing etc.).

AGE DISCRIMINATION IN EMPLOYMENT ACT (ADEA)



The ADEA protects individuals who are 40 years of age or older; there is no upper limit. The act prohibits an employer from discriminating against an individual with respect to compensation, terms, conditions, or privileges of employment because of his/her age.

GENDER/ SEX DISCRIMINATION



Sexual harassment is a form of sex discrimination. Unwelcome advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitutes sexual harassment. Pregnancy discrimination is also included. That is discrimination on the basis of pregnancy, childbirth, or related medical conditions the results in unfair treatment as a result of that condition.

ADHERENCE TO ESTABLISHED LAW, RULES, & STANDARDS

All state employees are required to adhere to the applicable principles of **fairness, equality, integrity, consistency and merit principles** in the application of the State's rules. Employees need to know what behavior(s) they exhibit that might violate these requirements. The next section will assist in describing what those behaviors may be.

DO'S & DON'TS OF BEHAVIOR

Unlawful harassing behavior can range from pressuring a co-worker or associate for a date, making inappropriate comments or telling inappropriate jokes, to an actual or attempted rape or sexual assault, etc. The following list supplies various examples of potentially unlawful harassing behavior in the work area. As you look at the list recall that the protected classes are race, religion, national origin, color, sex, age, disability, and protected activity.

VERBAL

- Referring to an adult as a girl, hunk, doll, babe, or honey.
- Whistling at someone, cat calls, or making sexual comments about a person's body.
- Making offensive comments about a person's race, ethnicity, religion, age, etc.
- Telling jokes that involve reference to any of the protected classes.
- Asking personal questions about social or sexual life.
- Repeatedly making fun of someone's religion or trying to convert someone to your religion during working hours.
- Repeatedly calling attention to or making assumptions about someone's age or refusing to allow him/her job opportunities.
- Telling lies or spreading rumors about a person's personal life as it relates to their protected class status.

VISUAL/PHYSICAL

- Making fun of or mimicking a protected class in some way.
- Giving "personal" gifts with inappropriate intent.
- Displaying any visuals insensitive to protected classes such as offensive cartoons.
- Giving a massage around the neck or shoulders.
- Hanging around uninvited or stalking a person.
- Intentionally brushing up against somebody.
- Hugging, kissing, patting, or stroking.
- Maintaining inappropriate personal space.



HOW TO TELL IF YOU ARE STEPPING OVER THE LINE

It may be hard to determine when your behavior goes from being friendly to harassing. It may help you to ask the following three questions:

1. ***Is my intent the same as the impact?***

To determine if your behavior could be unwelcome to another person, remember that the recipient of the behavior, not the person exhibiting the behavior, decides what is, “unwelcome.” It is the impact of behavior, not the intent of the person who did the behavior that will determine if unlawful harassment has occurred.

2. ***Is my behavior unwelcome?***

To determine if your behavior is unwanted, ask yourself the following:

A. Would I want any of these behaviors to be the subject of a story in the news media?

B. Would I want someone else to act this way toward a person that I care about?

If you answered “no” to either of the questions above, your behavior is probably unwelcome by the recipient.

RIGHT TO BE FREE FROM UNLAWFUL HARASSING BEHAVIOR

You have the right to be free of unlawful harassment in the workplace. At the same time, you have a responsibility to report it if it occurs. Many times people who are unlawfully harassed won't talk about it because they are afraid of being ridiculed, or because they don't want the person doing the harassment to get "in trouble." They just want the behavior to stop.

Eventually the strain and tension of having to deal with this unwanted attention can take its toll. It results in a loss of productivity, self-esteem and confidence, as well as stress-related physical symptoms.

To prevent this from occurring, it is important that all employees understand that they have a responsibility to report any known or suspected improper treatment of employees or clients. Employees are relied upon to help assure that the working environment is safe and free from harassing behavior.



REPORTING

If you are uncomfortable with someone's behavior, you are encouraged to tell the person that their behavior is unwelcome. However, if you are uncomfortable confronting the person directly, you **DO NOT** have to tell them before filing a complaint.

The following list of Do's and Don'ts are a **suggested approach** for any employee who is receiving unwanted harassing behaviors:

DO'S

1. ***Be assertive*** - you have the right.
2. ***Provide a clear and emphatic objection*** to any unwelcome or unwanted conduct, whether verbal or non-verbal in nature. ***Issue a verbal objection.*** Restate your objections. "I understand what you are saying but I don't want you to..." ***Say it again.*** Like a broken record, you may have to repeat your objections until the unwelcome behavior stops. And, you don't have to explain or justify why you want the person to stop.
3. ***Keep documentation*** of what (specifically describe the objectionable behavior), where, when, by whom, and who witnessed it.
4. ***Identify a witness*** if applicable.
5. ***Continue to report to work.***
6. After following these steps, ***if the harassing behavior continues, complain officially.***

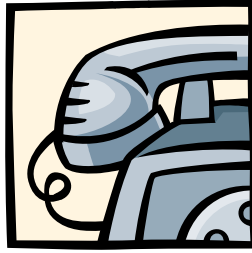
OR YOU MAY WANT TO:

7. ***Write a letter to the harasser*** and include the following:
 - a. A description of the unwelcome behavior
 - b. The time the behavior occurred
 - c. The fact that you want it stopped
 - d. The warning that if the behavior does not stop, you will take further action
 - e. Your signature and date

Make a copy and give the letter to the harasser in front of a witness.

DON'TS

1. ***Don't attempt to retaliate*** with reckless behavior or sub-par performance.
2. ***Don't make yourself guilty of insubordination*** by refusing to comply with legitimate and reasonable job performance requests.
3. ***Don't socially or emotionally isolate yourself***, seek peer relationships and talk about your problems.



WHO TO CALL

COMPLAINT PROCEDURE

Department of Human Resource Management Rule 477-15-4 outlines the Unlawful Harassment complaint procedures. Employees must understand that they can file a complaint (verbal or written) with **any** of the following personnel/offices:

1.	Any Supervisor, Manager or Director	
2.	Department of Human Resource Management HR Director - Wendy Peterson HR Specialist – Abdul Baksh HR Specialist – Mary Ann Davis	538-3060 538-3186 538-3062
3.	Anti-Discrimination and Labor Division, Utah Labor Commission	530-6801
4.	Equal Employment Opportunity Commission (Federal)	(800) 669-4000

INVESTIGATIONS

The preferred method for handling complaints or allegations regarding employee misconduct is the “preliminary review.”

Upon receiving an allegation of harassment, management shall consult with HR and unless otherwise directed shall conduct the review. In a preliminary review the supervisor is limited to interviewing the complainant and the alleged harasser only. During a preliminary review, the name of the complainant should be kept confidential.

Formal investigations shall be conducted under the direction of HR. A team of trained professionals will be appointed to handle the investigation.

INVESTIGATIONS (Cont.)



Complaints are automatically considered formal if any of the following is present:

1. Criminal touching has occurred
2. Behavior which “shocks” the public conscience
3. Existence of witnesses or involvement of other parties
4. Employee is represented by another party
5. Complainant has special expectations
6. There is financial liability or lawsuit potential
7. Unwelcome behavior is long-term or a repeat of previous violations
8. Special status of parties involved (e.g., clients, supervisors)
9. Parties from multiple departments are involved
10. Involves juveniles, clients or board members
11. Allegations of reprisal or retaliation for filing the claim have been made
12. Reason to believe a false claim has been filed

CONFIDENTIALITY

Confidentiality shall be maintained at all times. The integrity of any investigation depends on strict adherence to the rules regarding protected information by all parties involved. Information is shared only as necessary for legitimate business reasons.

RETALIATION

Employees need to know that they have protection against retaliation for exercising their right to file an unlawful harassment claim or for testifying as a witness or assisting in an investigation or hearing. This rule protects employees against retaliation, but does not protect them from legitimate administrative actions (e.g., substandard performance, insubordination, or refusal to take reasonable supervisory direction). Alleged harassers are strongly warned against taking any reprisal actions, and are typically required to have no communication with the complainant during the investigation.

RECORDS

Copies of records established as a result of an unlawful harassment investigation **are not** retained in the employee personnel files. However, if a disciplinary action is taken as a result of the investigation, the discipline will become part of the employees’ file.